



STAFF REPORT

TO: Board of Zoning Adjustment (BZA)

DATE: April 18, 2011

RE: Case No. **11-101BZA**, a request for variances to **Section 151-4.3C** and **Section 151-6.3B (5bii)** pertaining to the minimum front and side setback in an Agricultural (AG) zoning district, where such placement of accessory structures will be in non-compliance of the 2003 Land Development Code (LDC) [last amended March 8, 2010] requirements.

Applicant: Sondra A. Kasserman

Application: 03/21/11

Owner: Sondra A. Kasserman

Site Location: 12223 McKee Road

S15 | T52 | R30

Site Size: 5.00± acres

Existing Land Use and Zoning: Agricultural (AG) District

Zoning/Platting History: none

Surrounding Land Use and Zoning:

- North* – Agriculturally zoned land (AG), City of Excelsior Springs
- East* – Agriculturally zoned land (AG)
- South* – Agriculturally zoned land (AG)
- West* – Agriculturally zoned land (AG), City of Prathersville

PHYSICAL CONDITIONS



REVIEW

Sondra Kasserman owns a 5± acre parcel located at 12223 McKee Road, lying just south of the City of Excelsior Springs and east of the City of Prathersville. The subject property is zoned Agricultural (AG) District, and includes an existing single family residence (described as “**E-1**” shown above and on *Exhibits A, B, C and D*) and a detached accessory building (“**E-2**” shown above and on *Exhibits A, B, C and D*) located on the property.

The existing residence (**E-1**) was built in the year 1973 and is located approximately 15 feet *within* the 50-foot building setback line, but the setback standards of the Land Development Code (LDC) do not apply because it was built before the year 1976. The existing 14’X24’ storage building (**E-2**) was built after their purchase of the property in April 2007, and the building setbacks do apply. The existing storage building was built without a permit and is located 15 feet *within* the 50-foot building setback line.

Ms. Kasserman is proposing to build a 40’X60’ accessory building (“**P-1**” shown above and on *Exhibits A, B, C and D*) to be used as a garage/storage and workshop. It would be located 8 feet *within* the 50-foot front building setback line, and 7 feet *within* the side building setback line.

The following are the required building setbacks for accessory structures in an Agricultural (AG) district, Section 151-6.3 B (5bii):

<i>Minimum front street setback</i>	<i>50 feet</i>
<i>Minimum interior side setback</i>	<i>25 feet</i>
<i>Minimum rear setback</i>	<i>15 feet</i>

Ms. Kasserman is requesting the following variances:

- **E-2 -- Existing 14’X24’ Accessory Building:** a 35-foot front setback variance.
- **P-1 -- Proposed 40’X60’ Accessory Building:** a 42-foot front setback variance, and an 18-foot side setback variance.

In review of a non-use variance request, the following approval conditions must be met [*Section 151-3.11D (2)*]:

- A.** *“The requested variance arises from conditions that are unique to the subject property, that are not ordinarily found in the same zoning district and that are not a result of the owner’s intentional action;”*

Staff Response: The attached **letter** and **Exhibits A, B, C and D** has been presented by the petitioner.

- B.** *“The granting of the permit for the Variance will not be contrary to the public interest and will not adversely affect the rights of adjacent property owners or residents;”*

Staff Response: Public Notice was published for this case in the Kearney Courier on March 31, 2011, and certified letters were sent on April 1, 2011 to the adjacent property owners at the addresses furnished by the applicant. At this time, there have been no objections to the request.

- C.** *“The strict application of the provisions of which a Variance is requested will constitute an unnecessary hardship upon the property owner represented in the application;”*

Staff Response: The attached **letter** and **Exhibits A, B, C and D** has been presented by the petitioner.

- D.** *“and, The Variance desired will not adversely affect the public health, safety, or general welfare, nor destroy the intent of the Comprehensive Plan.”*

Staff Response: The subject property falls within the Urban Services Density Tier of the 2008 Clay County Comprehensive Plan. This request for variances will have no negative implications on the 2008 Comprehensive Plan. In addition, no opposition to this variance has been received to date.

RECOMMENDATION

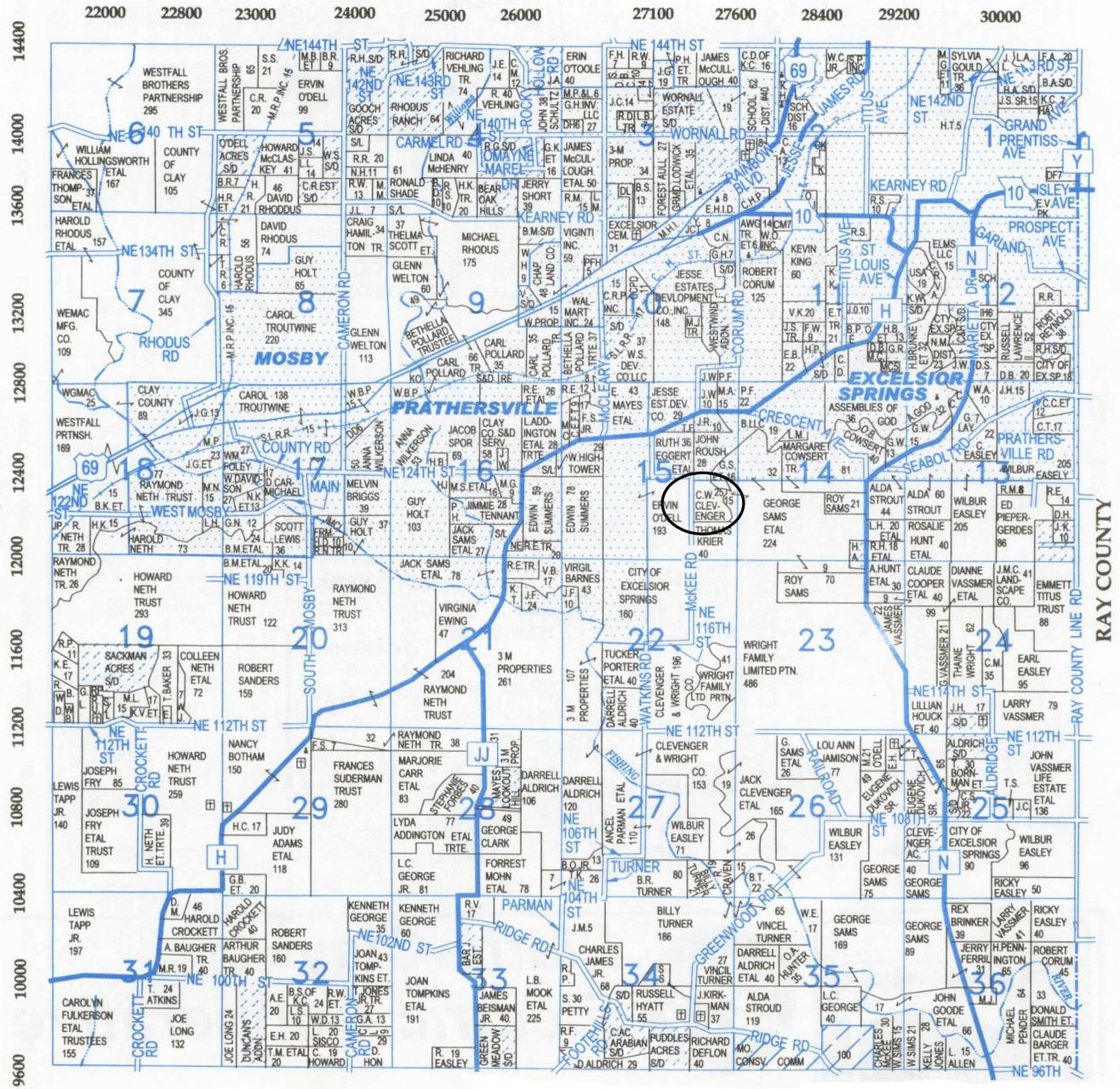
If the Board of Zoning Adjustment finds that the above four (4) approval criteria have been met, then the following variances and condition are to authorize the request:

1. A thirty-five foot (35') front setback variance from *Section 151-6.3B (5bii)* and *Section 151-4.3C* to allow an existing accessory building to remain 15 feet inside the front building setback line.
2. An eighteen foot (18') side setback variance from *Section 151-6.3B (5bii)* and *Section 151-4.3C* to allow for the placement of an accessory building.
3. A forty-two foot (42') front setback variance from *Section 151-6.3B (5bii)* and *Section 151-4.3C* to allow for the placement of an accessory building.
4. A building permit issued plus the fine amount for the existing storage building is paid before issuance of any new building permits on the subject property.

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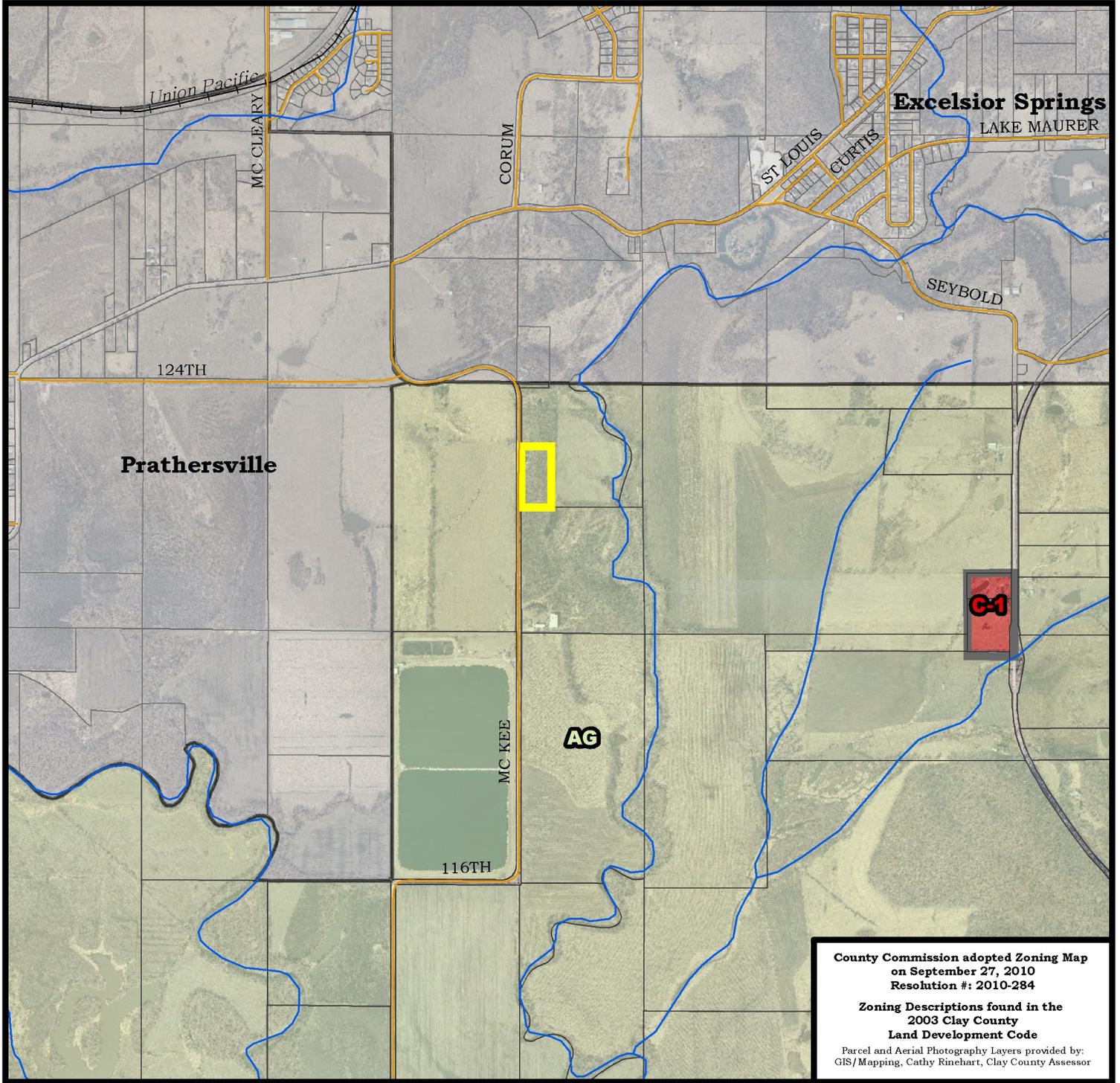
Attachment A - Vicinity Map

TOWNSHIP 52N • RANGE 30W



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Attachment B - Existing Conditions Map



County Commission adopted Zoning Map on September 27, 2010 Resolution #: 2010-284

Zoning Descriptions found in the 2003 Clay County Land Development Code

Parcel and Aerial Photography Layers provided by: GIS/Mapping, Cathy Rinehart, Clay County Assessor

Map Document: (G:\GIS\Project_Files\Vacinity Map - 8 x 11 P.mxd) 04/18/2011 -- 04:14:18 AM



Planning & Zoning Department



1 inch = 1,500 feet
1 inch = 0.28 miles

LEGEND

<ul style="list-style-type: none"> 12223_McKee parcel Streams (EPA) Railroads 	<p>Roads</p> <ul style="list-style-type: none"> Interstates State Highways Local Roads Highway Ramps 	<ul style="list-style-type: none"> Subdivisions County Boundaries 2009 City Limits Parks 	<p>Zoning Districts</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 15%;"> AG</td> <td style="width: 15%;"> R-1</td> <td style="width: 15%;"> R-1A</td> <td style="width: 15%;"> R-1B</td> <td style="width: 15%;"> R-3</td> <td style="width: 15%;"> C-1</td> <td style="width: 15%;"> AG/PUD</td> </tr> <tr> <td> C-2</td> <td> C-3</td> <td> I-1</td> <td> I-2</td> <td> OP</td> <td> R-1A/C</td> <td> R-1B/PUD</td> </tr> <tr> <td> I-1/PUD</td> <td> R-1A/I-1/PUD</td> <td> R-1B/C-2/PUD</td> <td></td> <td></td> <td></td> <td></td> </tr> </table>	 AG	 R-1	 R-1A	 R-1B	 R-3	 C-1	 AG/PUD	 C-2	 C-3	 I-1	 I-2	 OP	 R-1A/C	 R-1B/PUD	 I-1/PUD	 R-1A/I-1/PUD	 R-1B/C-2/PUD				
 AG	 R-1	 R-1A	 R-1B	 R-3	 C-1	 AG/PUD																		
 C-2	 C-3	 I-1	 I-2	 OP	 R-1A/C	 R-1B/PUD																		
 I-1/PUD	 R-1A/I-1/PUD	 R-1B/C-2/PUD																						

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Exhibit A – Petitioner Letter (p. 01 of 05)

March 21, 2011

John and Sondra Kasserman
12223 McKee Road North
Excelsior Springs Mo. 64024

Clay County Planning and Zoning
Attn. Matthew Tapp Director
234 W. Shrader, Suite C
Liberty, Missouri 64068

In Re: 2 Variance Requests property
known as 12223 McKee Road N. Excelsior Springs, Mo.

Dear Mr. Tapp,

Thank you and Debbie Viviano for meeting with me last Friday to physically look and discuss the variance request. One must actually look and walk this property to realize what we are dealing with.

First a little property history as we know it. Our particular property and those adjoining were Clevenger family properties. At some point in time as we understand, children and grandchildren were allowed to pick out 5 acre tracks on any of the family owned properties, on which they could build there homes. One of the family members picked this property which was the sectioned off into approximately 5 acres. In 1973 the house was built. We purchased the property in April of 2007.

At that time we established a master plan. Our plan was to disturb as few trees and grounds as possible.

Being primarily outside people we began working on the property removing brush (property was completely overgrown), tying decks and porches together, pouring concrete with new sidewalks and patios. We experienced a severe wash from the road down the driveway and it was determined that a retaining wall should be built. We decided to build 2 wings off of the retaining wall allowing us to level a little ground and allow for the construction of a 14' x 24' storage building. The storage building

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Exhibit A – Petitioner Letter (p. 02 of 05)

was built with careful attention to it being kept in line with the front of the house.

Sondra and I have been in the antique furniture restoration business for about 15 years. As markets changed and the economy began to decline we decided to close our retail operations and move everything to a warehouse that I own on Truman Road in Kansas City, Missouri. Sondra went back to work at NKC Hospital. I continued to work on small projects as they came about.

About 5 years ago an old friend had fallen and could not take care of himself. I brought him home to recuperate and I still have him. He is 85 years old suffering from dementia and lung cancer. I can no longer leave him alone for more than a couple of hours. He is on the waiting list to go into the VA home in Cameron (somewhere between 8 and 12 months from now). Sondra's parents are 85 and are dealing with poor health. We anticipate that we will be bringing them to Excelsior Springs from their home in Salina, Kansas. This will also require that I remain home for the majority of the time.

We decided during the winter that we would proceed with a building allowing me to continue to restore some of the many antiques we have acquired over the years and work on a couple of my old cars and be available to take care of her parents. That brings us to present time.

As you are aware, I met with you in mid February to discuss what was needed to acquire a building permit for a 40' x 60' building. I found out that there was a 50' setback requirement from the front property line and 25' setback from the side property line. At that time we discovered that my house nor my storage building were in compliance with zoning laws as they were only 35 feet from the front property line. There was nothing to be done about the house as it was built prior to 1976. The storage building required a building permit and would need a variance to remain at its present location. Due to the extreme slope of my property (approx 18 to 20 degrees) I would need to apply for a variance for the proposed building also. The variances requested are as follows:

- I. Request a 15' variance from the front property line for the existing storage building. Reference E-2

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Exhibit A – Petitioner Letter (p. 03 of 05)

The variance request would not have the effect of allowing a use that the underlying zoning district prohibits. As a result we believe a Non-Use Variance is appropriate pursuant to Section 151-3.11 (D) (@) of the Clay County Land Development Code.

a. The requested Variance that arises unique to the subject property, that are not ordinarily found in the same zoning district with exception in that:

1. An assumption was made predicated on the location of the house to determine the location of the storage building. They are in line with each other. Fully realizing that ignorance of the law is no excuse I can only hope that after reviewing the property and what we are trying to accomplish the variance would be allowed. This structure is used for lawn and gardening equipment, winter storage of lawn furniture etc.

b. The granting of the Variance will not be contrary to the public interest and will not adversely effect the rights of adjacent property owners or residents.

c. The strict application of the provisions of which a Variance is requested will constitute an unnecessary hardship on the property owner represented in the application in that;

1. The residence is to small for the storage of the personal property. The house is 1056 Sq. Ft. and the basement will be utilized to take care of Sondra's parents.

2. We could store property in a 24' licensed trailer on this location. However unsightly it might be it would not be a conflict with zoning laws.

d. The Variance desired will not adversely affect the public health, safety or general welfare, nor destroy the intent of the Comprehensive Plan. The existing structure (E-2) was built by Premier Barns of Richmond, Mo. and complies with building codes. The building is esthetically pleasing and matches the color of the house.

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Exhibit A – Petitioner Letter (p. 04 of 05)

- II. Request for a Variance of 42' from the front property line and 18' from the side property line, for a proposed 40' x 60' (approximate) storage, garage and workshop. Reference P-1

The variance requested would not have the effect of allowing a use the the underlying zoning district prohibits. As a result we believe a Non-Use Variance is appropriate pursuant to Section 151-3.11 (D) (2) of Clay county Land Development Code as the following conditions are reasonably met.

- a. The variance requested arises from conditions that are unique to the subject property, that are not ordinarily found in the same zoning district and that are not a result of the owners intentional action in that:
 1. The subject lot is approximately 5 acres. Approximately 20 % of this ground has little or limited use. The other 80% consists of dense woods and ravines.
 2. The property has an 18 to 20 degree slope from the road to the first 100 feet and then falls off a cliff.
 3. The proposed building (2100 sq. ft.) to be useful would have to be at the very top of the property by the road. The side request would allow a 60' long building with a 12' drive to allow access to the rear of the useable property.
 4. Due to the topography of this ground, building within the setbacks as required would be basically impossible to have any size building of use.
- b. The granting of the permit for the variance will not be contrary to the public interest and will not adversely effect the rights of adjacent property owners or residents.
 1. At present three landowners have been contacted with no opposition.
- c. The strict application of the provisions of which a variance is requested will constitute an unnecessary hardship upon the property owner in that;
 1. We would like to have a garage, storage area and a workshop. If it were not for the topography of the land and the limited amount of usable land for a building, we

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Exhibit A – Petitioner Letter (p. 05 of 05)

could build about anything we wanted that met setback requirements and building codes.

2. After finding out the setback requirements, we discussed bringing in 2 or 3 of my licensed 52' semi-trailers. This although legal would be unsightly and solves nothing but a storage problem. We decided this was not a viable option and proceeded with the variance request.

The Variance desired will not adversely affect the public health, safety, or general welfare, nor destroy the intent of the Comprehensive Plan in that the proposed detached structure will be constructed by Quality Structures Inc., out of Cameron, Missouri and will comply with all building codes. This building would be harmonious with the home and the existing storage structure.

We hope that this has been informative to you, and the members of the Board of Zoning Adjustment. Should you have any questions or be in need of further information, please feel free to give either one of us a call.

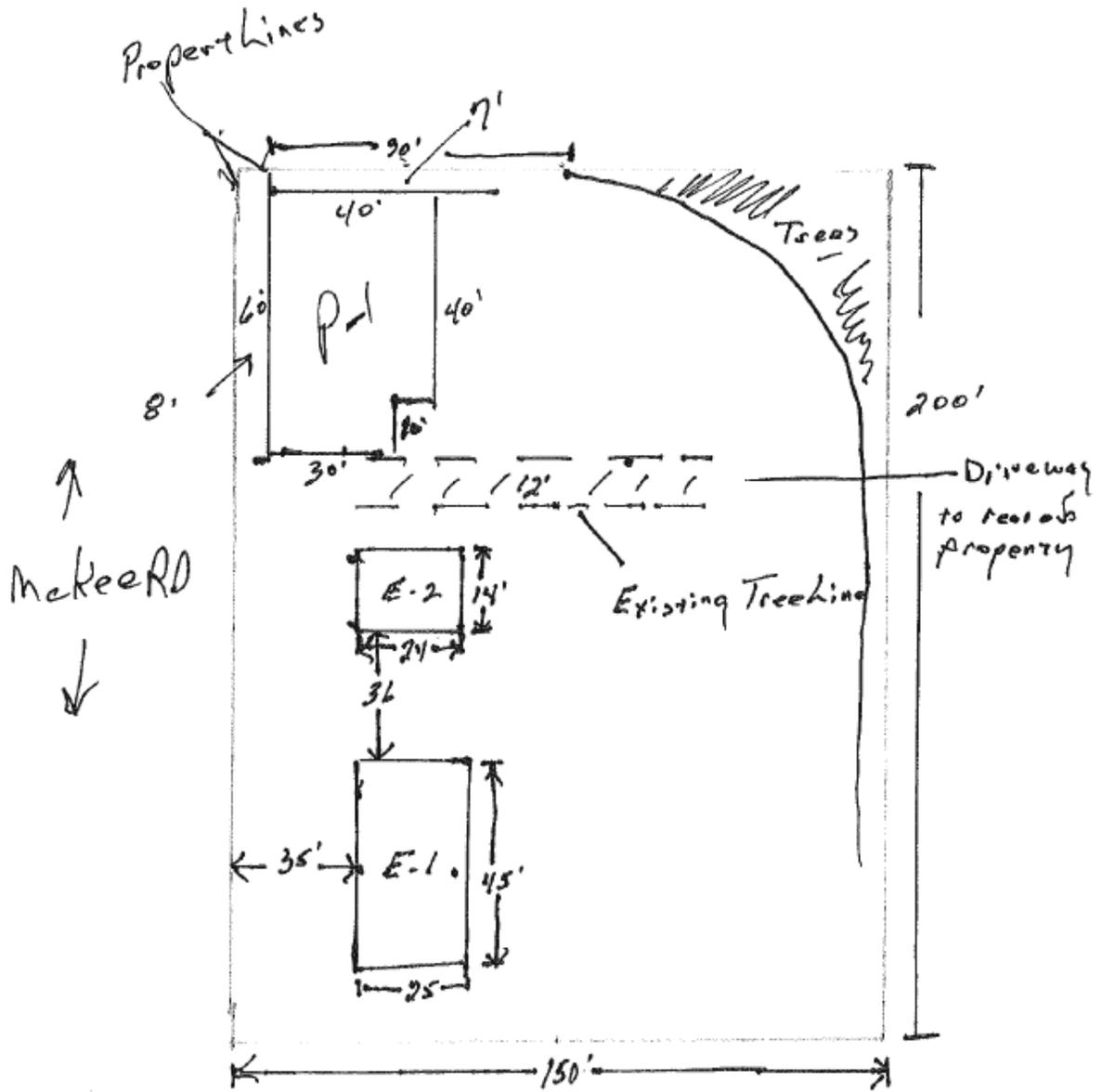
Respectfully submitted,



John L. and Sondra Kasserman
(816)853-8966 (816)853-1009

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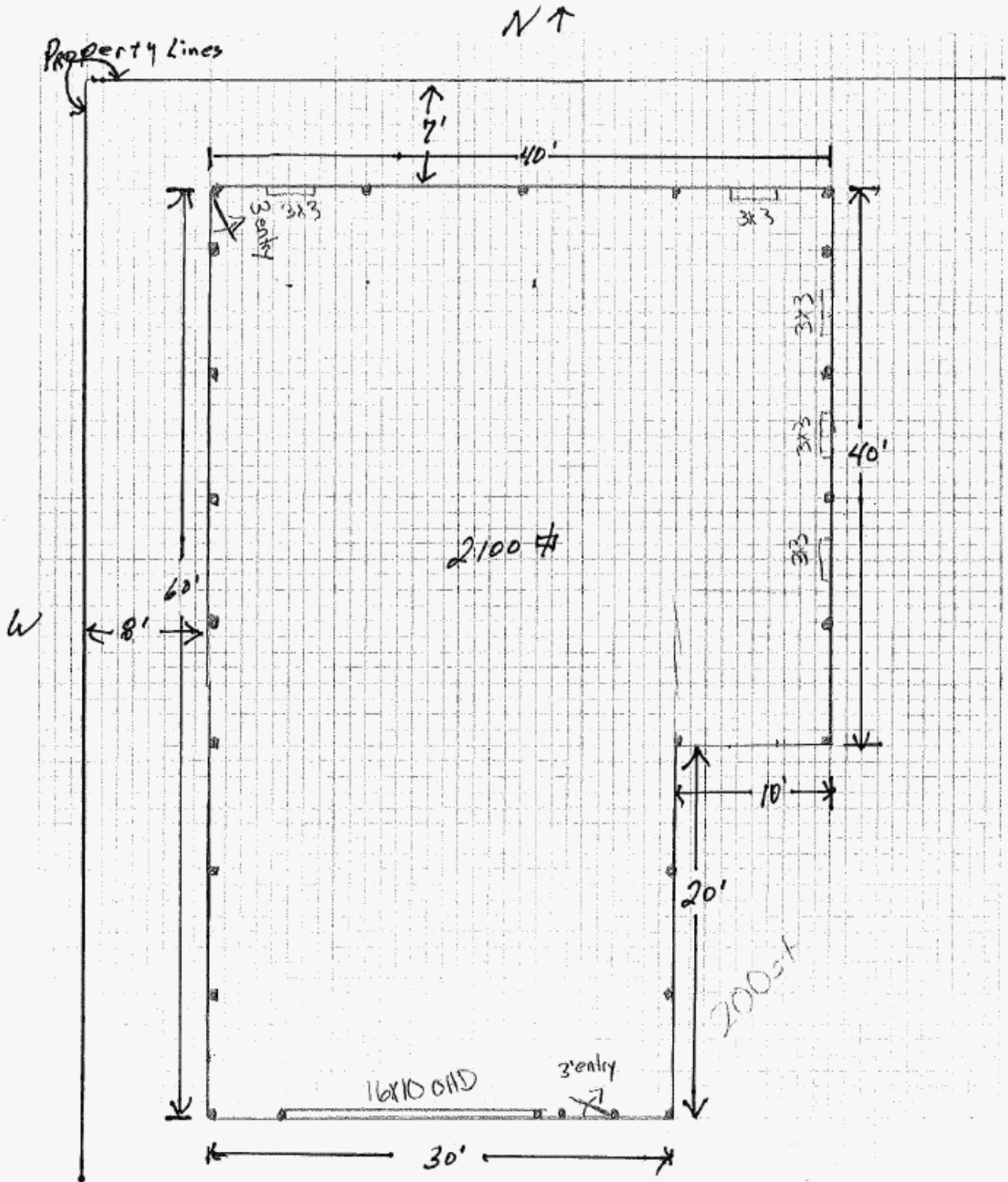
Exhibit B - Site Plan Drawing



Not To Scale

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Exhibit C - P-1 Building Drawing



Proposed Building (P-1)